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IN THE

# Supreme Court of the United States

October Term, 1960

No. 485

JAMES W. ROBINSON, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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To:

*The Honorable The Chief Justice of The United States and the Honorable Associate Justices of The Supreme Court of the United States:*

James W. Robinson, your petitioner, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered September 15, 1960, affirming a judgment of conviction in a criminal case.

## OPINIONS BELOW

There was no opinion in the District Court.

The opinion of the United States Court of Appeals for the District of Columbia Circuit rendered September 15, 1960, is not yet reported but is contained in the certified transcript of record filed herein and in the appendix to this petition.

## JURISDICTION

The jurisdiction of this Court is invoked under Title 28, Section 1254, United States Code and Rule 37 (b), Federal Rules of Criminal Procedure.

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered September 15, 1960.

## QUESTIONS PRESENTED

### I.

IS AMENDMENT IV VIOLATED BY THE SEARCH WITH A FLASHLIGHT OF AN AUTOMOBILE STOPPED FOR NO PURPOSE OTHER THAN A MINOR TRAFFIC VIOLATION BY ONE OFFICER WHILE AT THE SAME TIME THE DRIVER IS BEHIND THE AUTOMOBILE WITH A SECOND OFFICER THEN IN THE PROCESS OF ISSUING TO THE DRIVER A TRAFFIC VIOLATION NOTICE?

### II.

WHERE THE CLOTHING OF AN ACCUSED IS SEIZED SOLELY FOR THE PURPOSE OF "GATHERING EVIDENCE" AT A TIME WHEN HE IS IN CUSTODY UPON A CHARGE OF "INVESTIGATION" AND OFFICERS HAVE NO KNOWLEDGE OF ANY CRIME COMMITTED BY ACCUSED AT THE TIME OF THE SEIZURE, IS THE SEIZED CLOTHING ADMISSIBLE IN A FEDERAL CRIMINAL TRIAL?

## CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## STATEMENT

In the District Court petitioner was convicted on counts one and two of a three-count indictment which charged petitioner and co-defendants Howard H. Williams and Thomas F. Dawson jointly in count one with the crime of Housebreaking, in count two with the crime of Grand Larceny, and in count three with the crime of Destroying Movable Property. (R. 6)

Before trial petitioner filed a seasonable motion to suppress evidence. (R. 16) Co-defendants, Howard H. Williams and Thomas F. Dawson, also filed seasonable motions to suppress evidence. (R. 8; 13) The motions of petitioner and his co-defendants alleged that each was arrested without probable cause, that the automobile of Williams was searched without probable cause and that property and clothing were seized in violation of Amendment IV of the Constitution of the United States.

All of the motions to suppress were consolidated for hearing. They were heard by the trial judge immediately prior to the trial. The motions were denied and the trial began. (R. 156)

The evidence, both upon the hearing of the motion and upon the trial of the cause, showed the facts following:

Police Officers Harris and Bradshaw, while on routine motorcycle traffic patrol of District of Columbia streets about 4:30 a.m., November 29, 1959, observed and followed

a Buick automobile then exceeding the speed limit. When the automobile stopped for a traffic signal, Officer Bradshaw came alongside the Buick and ordered the driver, Howard H. Williams, to pull over to the curb. (R. 52)

The driver, Howard H. Williams, obeyed the command of the officer then got out of the automobile and walked to the back of the car where Bradshaw was standing. (R. 54) Williams said to Bradshaw, "Why are you stopping me, I have not done anything?" (R. 103) Bradshaw then advised Williams of the traffic violation, exceeding the speed limit. (R. 103) Bradshaw asked for and received the driver's permit of Williams. When Bradshaw asked for Williams' registration card, Williams called to appellant Robinson who brought the card to Williams after obtaining it from the glove compartment of the automobile. (R. 104) The license tags on the automobile and the registration card of Williams corresponded to each other. (R. 104) Officer Bradshaw testified as follows:

> Q. Speaking of the traffic violation of Mr. Williams, did you give him a traffic violation ticket?[1]
> A. Yes sir.
> Q. How many days later?
> A. AT THE SAME TIME THE SAME DATE. (R. 37)

In the meanwhile Officer Harris had gone to the right side of the automobile and when Robinson got out of the car the interior light came on. Harris had a lighted flashlight in his hand directing light into the car *at the same time*. (R. 105) Officer Harris then "saw a roll of coins lying on the front seat of the floor of the car." (R. 106) When asked what was he looking for in the automobile, Harris testified, "I WAS NOT LOOKING FOR ANYTHING IN PARTICULAR." (R. 105) He later said he was looking for

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[1] In the District of Columbia practice, a violation notice or ticket given to a traffic offender permits the violator to post collateral (which he may forfeit at his option) within five (5) days and the violator is not taken into custody.

more coins or "*whatever else he could see.*" (R. 106) A little later he saw a bag *under the seat.* (R. 106) He seized the bag in his hand but then left it in the car and walked back to where Bradshaw was standing with Robinson and Williams. (R. 107) Bradshaw then asked Robinson, "if he had any weapons on him and if he could account for the money." (R. 56) Harris walked back to the car and produced the money and Bradshaw asked, "is this your money?" and Williams and Robinson said nothing at all. (R. 107) Harris then told the third man, the appellant Dawson, who was still seated in the rear seat of the car, to get out of the car. Harris then drew his gun and caused the three men to raise their hands. (R. 107) Later Bradshaw looked into the rear seat and there he saw a second bag. This second bag was not removed until after arrival of the patrol wagon. (R. 61) Bradshaw had no idea as to the contents of the bag until it was opened at Police Headquarters. (R. 62) At the time of the arrest of Robinson, Williams and Dawson, the officers did not know of any crime that had been committed by anyone of the three. (R. 107) They were arrested for "INVESTIGATION." Harris was asked concerning Robinson, "SO YOU ARRESTED HIM TO INVESTIGATE AND SEE IF HE HAD COMMITTED A CRIME, DID YOU NOT?" and Harris testified, "THAT IS CORRECT." (R. 107)

Having thus arrested petitioner, Williams and Dawson for "INVESTIGATION," the officers caused them to be transported to Police Headquarters in a patrol wagon. (R. 42) The Buick automobile was driven to the basement of Police Headquarters building by another policeman where it was given a painstaking and thorough search by Officer Bradshaw. From the front seat he seized two (2) bars and a hatchet that had been previously seen. (R. 42) He also seized a pair of gloves and a flashlight that had not been previously discovered. (R. 43) All of this searching of the automobile and the seizing of objects thereupon took place prior to ascertainment of any crime that had been

committed by Robinson, Williams or Dawson. It was accomplished without a warrant and while these men were still under the nonexistent charge of "INVESTIGATION."

A short while after the search of the automobile above described, Officers Harris and Bradshaw opened the first bag seized by Officer Harris. This was done in the Robbery Squad Room and then for the first time it was discovered that this bag contained a number of checks. Many of the checks had upon their faces the name, "Park and Shop Pharmacy."

Officer Chapman then seized the shoes and trousers of petitioner, Dawson and Williams. (R. 130) He did this, he said, *to gather evidence*. After having seized the clothing of petitioner and his co-defendants, Dawson and Williams, Officer Chapman went to the Park and Shop Pharmacy on Massachusetts Avenue, N.W. in the District. (R. 131) Meanwhile, Robbery Squad officers had contacted officers at No. 8 Precinct who discovered that the Park and Shop Pharmacy had been broken into. The officers from No. 8 Precinct contacted the owners of the Pharmacy. The owners, Weinstein and wife, were met at the drugstore by Officer Chapman. (R. 132) The Weinsteins were then brought to Police Headquarters where they identified the checks and money bag as their property. (R. 167)

After the denial of all of the motions to suppress evidence, the trial proceeded. Over the frequent objections of defense counsel the bag, money, checks, shoes, clothing, gloves, and tools were introduced into evidence. Also there was evidence that the safe removed from the Weinstein's drugstore was recovered near Washington. The Government produced expert testimony to the effect that paint chips and insulation taken from the Weinstein's safe matched insulation and paint chips taken from the shoes and trousers of Robinson and his co-defendants and the tools seized from the automobile over objections of defense counsel. (R. 210; 221; 226)

Petitioner and his co-defendants, Dawson and Williams, were all convicted of Housebreaking and Larceny. (R. 242) Each received a total sentence of 4 to 12 years imprisonment. (R. 17) On appeal to the United States Court of Appeals for the District of Columbia Circuit, the judgment of the District Court was affirmed. (R. 247)

## REASONS FOR ALLOWING THE WRIT

### I.

This Court has never decided the question as to the validity of a search of an automobile stopped by officers in a federal jurisdiction for a minor traffic violation where there is no basis for the search other than the traffic arrest for the purpose of issuing a traffic violation notice or "ticket." Although this Court has carefully delineated and defined the extent of the right to search incident to a lawful arrest in other areas and under other circumstances, the question as to whether or not Amendment IV. of the Constitution of the United States and the applicable statutes permit the search of an automobile while the driver is outside the automobile about to receive from the arresting officer a violation notice is a question of nation-wide appeal not only because of its novelty in this Court, but also because of the frequency of its occurrence in various forms in federal criminal trials. The question is one of great importance in the administration of criminal justice in federal courts, and there is a great need of some pronouncement upon the subject by this Honorable Court for the future guidance of federal trial and appellate courts. Moreover, in the subject case, the United States Court of Appeals for the District of Columbia Circuit has ruled in a way probably in conflict with the rationale of decisions by this Court in similar cases so that there is a great need for a decision by this Court upon the subject.

The question as to whether or not a citizen retains his right of privacy in his effects contained in his automobile

even though he is arrested for a mere traffic violation is one that has not been decided by this Court but is one that warrants the attention of this Court by the allowance of the writ herein prayed. The writ should be allowed because only a definition of the citizen's rights in this area by this Court could possibly properly advise federal trial and appellate courts. At present, these inferior courts can only be guided by their varying interpretations of decisions of this Court upon related and similar subjects but which decisions do not undertake to define the question herein involved, *i.e.: United States* v. *Di Re*, 332 U.S. 581; *Brinegar* v. *United States*, 338 U.S. 160; *Carroll* v. *United States*, 267 U.S. 132. In all of these cases the stopping of an automobile for a minor traffic violation was *not* the reason for the stopping of the automobile or the reason for the drivers' arrest. Further, this case involves the arrest of a passenger in the automobile stopped for the traffic violation under the afore-mentioned circumstances. Only *Di Re*, *supra*, involves a passenger and, of course, in that case, as in all the others, the automobile was not stopped solely because of a traffic violation.

II.

There have been decisions of federal appellate courts treating of the right of officers to seize the clothing of a person arrested and charged with a specific crime. There is no decision of a federal appellate court that concerns itself with the validity of the seizure of the clothing of one arrested upon suspicion and for "*investigation*," before it has been ascertained that a specific crime had been committed by anyone, let alone the person arrested. This is the situation in the instant case. The decision of the Court of Appeals in this case is perhaps the only federal law upon the subject. That decision should, therefore, be examined by this Court because of its importance in future federal criminal trials and because its logic is contrary to the law as expressed by this Court in other cases involving

similar propositions of law but vastly dissimilar factual circumstances. The inherent power of this Court to formulate rules of evidence guided by considerations of justice should be invoked in this case.

## ARGUMENT

### I.

### THE SEARCH OF AN AUTOMOBILE STOPPED FOR A MINOR TRAFFIC VIOLATION IS UNLAWFUL AND ITS FRUITS INADMISSIBLE UNDER AMENDMENT IV.

Petitioner was a passenger in a Buick automobile owned and operated by Howard H. Williams. A second passenger was Thomas F. Dawson. This automobile was stopped because it was exceeding the speed limit and for no other reason. While Williams was outside the automobile at its rear exhibiting his credentials to one officer who was about to issue to him a traffic violation notice,[1] another officer had gone up to the right front door of the automobile for no purpose other than to look into and search the automobile. It so happened that when petitioner opened the door of the car to bring to Williams the registration card (certificate of ownership issued when the license tags are issued and required to be kept in the car), the interior dome light of the automobile came on. *At this very same time Officer Harris had in his hand a lighted flashlight looking into the automobile.* Officer Harris then saw lying on the floor of the car a roll of coins. Using his flashlight, Officer Harris then proceeded to search further. Under the front seat, he saw protruding a corner of a canvas bag. This bag he pulled out and seized. When pulled out, he

[1] In the District of Columbia the usual practice is to issue to a violator who produces a valid District of Columbia driver's permit and registration card a violation notice, commonly referred to as a traffic "ticket." The violator is not taken into custody but is required to post "collateral" within five (5) days from date of the notice. He may elect to forfeit "collateral" at the time it is posted if he does not desire a trial and he is not required to appear in court.

saw that it bore the name of a bank and appeared to be a bank money bag. He and Officer Bradshaw questioned petitioner and Williams at the rear of the car concerning the money on the floor and they said absolutely nothing. About the same time Officer Harris drew his revolver, caused Williams and petitioner to place their hands against the car and searched them.

It is obvious that the arrest of Williams occurred the moment the automobile was stopped. *Henry* v. *United States*, —— U.S. ——, 4 L. ed. 2d. 134. The first question is whether or not the arrest of Williams for the traffic violation gave to the companion of the arresting officer the right under the Fourth Amendment to search the automobile. In answering the question as to whether or not the search was an unreasonable one, these facts must be borne in mind:

(1) The record indicates that both officers were very positive that the Williams Buick was stopped for the speed violation only.

(2) The officers were traffic officers on motorcycles patrolling the streets on traffic duty.

(3) Williams produced a valid District of Columbia driver's license and indicia of ownership of the automobile.

(4) Officer Bradshaw took out his "ticket book" and began to write out a traffic violation notice which would have entitled Williams to post collateral within five days and he would not have been taken into custody.

(5) Officer Bradshaw did not fear resistance on the part of Williams, nor did he give any indication that he expected Williams to flee (he had Williams' driver's license in his possession), nor was there any indication from the record that Bradshaw feared that Williams had in the automobile some weapon that he might use

to effect an escape. In fact, there was never a question of flight nor possession of a weapon.

The question must be asked: *Why did Officer Harris go to the front door of the automobile with a lighted flashlight in his hand?* Testimony in the record does not supply the obvious answer, but it is plain that Officer Harris purposed to search the car and that he was in the act of searching when he saw the roll of coins.

Now, it has been the position of the Government in this cause that the search of the automobile did not begin until after Harris observed the roll of coins on the floor of the automobile. Whether or not the presence of a roll of coins (said to be pennies) upon the floor of an automobile is sufficient probable cause to search an automobile upon the theory that the occupants had committed a felony is the question that is determinative of this case. Petitioner says that the search began when Officer Harris first flashed his light into the automobile. But assuming, *arguendo*, that the search did not begin until Officer Harris saw the roll of coins, we are again confronted with the question as to whether or not the observation of the roll of pennies upon the car floor was in fact probable cause to believe that a felony had been committed and that such felony had been committed by petitioner, Williams or Dawson.

It must be remembered at this stage of the argument that Officers Harris and Bradshaw were insistent throughout their testimony that they had no reason to stop the Buick other than for the traffic violation. (R. 65) The officers had no knowledge of any recently committed robbery and they had no "lookout" for any automobile similar to the Williams Buick. (R. 121-122) To say that Officer Harris then believed that a felony had been committed and that it had been committed by petitioner, Williams and Dawson not only taxes the imagination but is also contrary to the sworn testimony of Officer Harris:

Q. Now Officer Harris, did you have in your hand about this time a flashlight?

A. Yes, I did.

Q. And did you shine that flashlight into this automobile?

A. Yes, I did.

Q. No, I do not believe you have understood the question: WHAT WERE YOU LOOKING FOR?

A. I WAS NOT LOOKING FOR ANYTHING IN PARTICULAR.

Q. You were just looking around in the car?

A. No, sir, that is not right.

Q. You were not looking for anything in particular, but you did shine the light in?

A. The interior lights in the car came on, and I saw a roll of coins lying on the front seat of the floor of the car.

Q. And then you turned your light on? You turned your flashlight on?

A. Yes, I turned the flashlight on, that is right.

Q. It is then that you began to look around in the car?

A. After I had seen this roll of coins lying on the floor.

Q. After you saw a roll of coins on the floor you decided to search the car, is that right?

A. No, sir, I did not decide to search the car.

Q. What were you doing with your light flashing around in the car?

A. I was looking to see if there was more rolls of coins lying around.

Q. YOU WERE SEARCHING FOR MORE COINS?

A. YES, SIR.

Q. And whatever else you could find?

A. How do you mean "whatever else I could find?"

Q. MORE COINS, OR WHATEVER ELSE YOU COULD SEE?

A. *Yes, that is right.*

Q. AND THERE CAME A TIME WHEN YOU DID SEE SOMETHING, ISN'T THAT CORRECT?

A. THAT IS CORRECT.

Q. YOU SAW A BAG?

A. YES, SIR.

Q. AND YOU SEIZED THE BAG IN YOUR HAND?

A. YES, SIR.

Q. DID YOU GRAB THE COINS?

A. YES, I DID. THE COINS WERE LYING IN THE BAG, EXCEPT FOR THIS ONE ROLL, AND IT WAS ON THE FLOOR.

Q. THIS BAG WAS UNDER THE SEAT, WAS IT NOT?

A. THAT IS RIGHT. (R. 105-106)

The foregoing testimony of Officer Harris is not consistent with any theory other than that he began the search of a citizen's automobile *only* because he saw a roll of coins on the front floor. Possession of a roll of coins is in and of itself perfectly innocent and innocuous and there was no other circumstance known to Officer Harris that would have rendered the mere possession of the roll of coins sufficient reason for a prudent man to believe that a felony had been committed. *Poldo v. United States*, 55 F. 2d. 866.

Further, Harris' testimony shows that petitioner was arrested not for any crime but for "INVESTIGATION." Officer Bradshaw confirmed this. (R. 57) Officer Harris testified:

Q. NOW, AT THAT TIME DID YOU KNOW OF ANY CRIME THAT HAD BEEN COMMITTED BY ROBINSON, WILLIAMS OR DAWSON?

A. NO, SIR, I DID NOT.

Q. HAD YOU HEARD OF ANY CRIME THAT HAD BEEN COMMITTED BY ROBINSON, WILLIAMS OR DAWSON?

A. NO, SIR, I HAD NOT.

Q. *Now, at the time that you placed Robinson under arrest, for what crime was he arrested?*

A. AT THAT TIME HE WAS ARRESTED OR BEING ARRESTED FOR INVESTIGATION.

Q. Now, investigation as we all know, is not a crime, isn't that so?

A. That is correct, and investigation —

Q. SO YOU ARRESTED HIM TO INVESTIGATE AND SEE IF HE HAD COMMITTED A CRIME, DID YOU NOT?

A. THAT IS CORRECT. (R. 107)

The denial of the motion to suppress filed by Williams, the owner of the Buick automobile in which petitioner rode, was error affecting petitioner's rights as well. *McDonald*

v. *United States*, 335 U.S. 451, 93 L. ed. 153; *Jones* v. *United States*, — U.S. —, 4 L. ed. 2d. 697, 706.

This Court, in *Henry* v *United States*, — U.S. —, 4 L. ed. 2d. 134 at page 139, said:

> ". . . . The police must have reasonable grounds to believe that the particular package carried by the citizen is contraband."

Here the police had no reason or cause whatsoever to even suspect that the roll of coins on the floor of the automobile was contraband.

The Government makes much of the fact that after the search and after the seizure of the money bag, when questioned concerning the money, all three men remained silent. That argument loses sight of the fact that the search and seizure had then been completed and no conduct on the part of Robinson or of the other two men could possibly justify the search that was illegal from its inception. *McDonald* v. *United States*, 335 U.S. 451, 93 L. ed. 153; *Miller* v. *United States*, 357 U.S. 301, 2 L. ed. 2d. 1332; *United States* v. *Di Re*, 331 U.S. 581, 92 L. ed. 210.

In many cases, the United States has urged, *Carroll* v. *United States*, 267 U.S. 132, as being determinative of all questions of search and seizure involving automobiles. *Carroll* is certainly NOT the final arbiter of such questions because this Court in *United States* v. *Di Re*, 332 U.S. 581, had this to say: ". . . the Carroll decision falls short of establishing a doctrine that, without such legislation, automobiles nonetheless are subject to search without warrant in enforcement of federal statutes. *This Court has never yet said so.*".

The Court of Appeals in this case has sanctioned the search of a citizen's automobile merely because there was observed upon the floor of the car a roll of coins. This Court should, therefore, allow the writ prayed so that the law in federal jurisdictions in this regard might be clarified.

## II.

### SEIZURE OF A SUSPECT'S CLOTHING TO GATHER EVIDENCE BEFORE ANY SPECIFIC OFFENSE COMMITTED HAS BEEN ASCERTAINED VIOLATES AMENDMENT IV.

At the time that the shoes and trousers of petitioner and his co-defendants were seized, the three men had been taken to Headquarters and it had not, even then, been determined that housebreaking and larceny had been committed at the Park and Shop Pharmacy. The seizure of these articles of clothing was wholly and solely for the purpose of gathering evidence and for evidence alone. (R. 141) Indeed, Officer Chapman freely and frankly stated his purpose:

> Q. Mr. Witness, when you took from this defendant Robinson his shoes, you had in mind a purpose, did you not?
>
> A. Yes, I did.
>
> Q. What was that purpose?
>
> A. I had the thought in mind that, if there were a safe involved in this housebreaking, possibly the comparison of particles from the safe and comparison with any particles possibly found in the shoes—
>
> Q. And that was true with the other articles of clothing taken from the other defendants?
>
> A. That is right, sir.
>
> Q. That was true, also, with the other items of clothing removed from Robinson?
>
> A. That is right. (R. 139)

Said Judge Prettyman in *Morrison* v. *United States*, 104 App. D.C. 352, 262, F. 2d. 449 at page 451:

> "*A fortiori*, if purely evidentiary material, may not be seized even under a search warrant, as in Gouled, or as an incident to an arrest under an arrest warrant, as in Lefkowitz, it cannot be seized legally without any warrant whatsoever and without any arrest."

There is no question here but that the trousers and shoes of petitioner were not the instruments of crime, the fruits of crime or weapons whereby escape might be effected.

*Morrison* v. *United States*, *supra*. See also: *Judd* v. *United States*, 89 App. D.C. 64, 190 F. 2d. 649. Certainly petitioner's clothing could not lawfully be seized either with or without a warrant.

The right of law enforcement officers to seize clothing of an accused solely for the purpose of gathering evidence to be used against him is a question that has not heretofore been decided by this Court, and it is one of great importance in the administration of criminal justice in federal courts. There is a need for a decision by this Court treating of the extent of the power of federal officers to seize a citizen's clothing solely for use as evidence against him in a federal criminal trial. This question is deserving of the attention of this Court by the allowance of a writ of certiorari herein such that a determination as to the validity of a widespread practice might be made.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

De Long Harris,
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*Counsel for Petitioner.*

October 14, 1960

# APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,652

JAMES W. ROBINSON, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 15,658

THOMAS F. DAWSON, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 15,722

HOWARD H. WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeals from the United States District Court
for the District of Columbia

Decided September 15, 1960

*Mr. De Lova Harris* for appellant in No. 15,652. *Mr. Edward M. Lichtman*, with whom *Mr. J. Ronald Lenz* (both appointed by this court) was on the brief, for appellant in No. 15,658. *Mr. [illegible] K. N[illegible]* for appellant in No. 15,722.

*Mr. John Jud. O'Donnell*, Assistant United States Attorney, with whom *Messrs. Oliver Gasch*, United States Attorney, and *Carl W. Belcher*, Assistant United States Attorney, were on the brief, for appellee.

Before Edgerton, Washington and Bastian, Circuit Judges.

Washington, *Circuit Judge*: Defendants appellants were convicted in the District Court of housebreaking and grand larceny. D.C. Code §§ 22-1801 (1951), 22-2201 (1951), 22-403 (1951). On appeal, they challenge as illegal their arrest and the search and seizure which followed. The trial court erred, they say, in denying their motion to suppress the evidence so obtained. At the hearing on the motion, the following appeared. The defendants, speeding through the streets of Washington at more than 60 miles per hour, at about 4:30 on a Sunday morning, were stopped by police officers. When one of the defendants opened the door of the car an interior light came on, revealing to one of the officers a roll of coins on the floor in front of the front seat, as well as a partly concealed canvas bag, apparently a money bag of the sort used by banks, with loose coins protruding from its opening. The officers ordered the defendants to leave the car and asked them about the money. The defendants were evasive. One of the officers then used his flashlight and observed another bag of the same sort in the rear of the car. The defendants were thereupon taken to police headquarters, where the money was soon identified with reasonable certainty as the loot from the burglary just committed of a pharmacy in another part of the city. The trial judge ruled that probable cause existed for the arrest of the defendants, and that a subsequent further search of the automobile, resulting in the seizure of certain articles therefrom, was proper. We agree. See *Bell v. United States*, 102 U.S. App. D.C. 383, 254 F. 2d 82, cert. denied, 358 U.S. 885 (1958).

Appellants Robinson and Williams complain that their clothing was removed at police headquarters, shortly after

their arrest, and was subjected to tests at the laboratories of the Federal Bureau of Investigation. These tests revealed paint chips and other debris corresponding to like materials found at the scene of the burglary, and at a place where a safe stolen from the pharmacy had been opened. We think that this procedure was proper, since probable cause to believe appellants guilty of housebreaking and larceny had already appeared, and appellants were validly under arrest therefor. See, e.g., *Weeks v. United States*, 232 U.S. 383, 392 (1914); *Morton v. United States*, 79 U.S. App. D.C. 329, 147 F. 2d 28, cert. denied, 324 U.S. 875, (1945); *Shuttle v. United States*, 72 App. D.C. 250, 113 F. 2d 34 (1940). Robinson and Williams also claim that the Government failed to show a complete history of continuity of possession, from arrest to trial, with respect to the clothing so taken, as well as certain tools and paint samples introduced in evidence as exhibits. They rely on *Nowak v. District of Columbia*, 82 U.S. App. D.C. 95, 160 F. 2d 588 (1947). That decision, however, is clearly distinguishable. In the present case, the Government's showing of continuity of possession was reasonably adequate, under the circumstances, although not every person who might have had access to the exhibits was called to the stand. Little or nothing turned on the precise nature of the custody of the articles, since their identity and the results of the tests were proved by clear and unchallenged testimony. That the appellants were in possession of property taken from the stolen safe was plainly established. The exhibits, in contrast to *Nowak*, were far from being an essential part of the Government's case. No evidence was offered by the defense suggesting any laxity in the custodial or laboratory procedures of the Government, or any reason why the exhibits should be regarded as in any way untrustworthy. Appellants' contention must be rejected. See, generally, *Paradyne Research Laboratories, Inc. v. United States*, 169 F. 2d 375 (9th Cir.), cert. denied, 335 U.S. 853 (1948).

The judgments of conviction will therefore be

*Affirmed.*

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JAMES R. BROWNING, Clerk

No. 485

# In the Supreme Court of the United States

OCTOBER TERM, 1960

JAMES W. ROBINSON, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Appeals (Pet. App. [illegible]) is not yet reported.

### JURISDICTION

The judgment of the Court of Appeals was entered on September 15, 1960 (R. 247). The petition for a writ of certiorari was filed on October 11, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether there was probable cause to arrest petitioner without a warrant.

2. Whether the shoes and trousers worn by petitioner could properly be seized incidental to his arrest.

## STATEMENT

Petitioner and his two co-defendants were convicted in the District of Columbia of housebreaking and grand larceny (J.A. 1, 242). Petitioner was sentenced to concurrent terms of imprisonment of from 4 to 12 years on count one and 3 to 10 years on count two (J.A. 17). On appeal, the Court of Appeals affirmed (J.A. 247).

The sole issue is the validity of the District Court's denial of petitioner's motion to suppress evidence obtained incident to his arrest (J.A. 16). At the hearing on the motion, the following evidence was adduced.

On November 29, 1959, about 4:15 a.m., Officers Bradshaw and Harris noticed a Buick proceeding on New York Avenue at a speed of about 60–65 miles per hour in a 30-mile zone (J.A. 29–30, 51–110). When the Buick came to a stop at an intersection, the two police officers requested the driver to stop after he crossed the intersection. Petitioner's co-defendant, Williams, who was driving the car, obeyed (J.A. 102–103). Williams left the car and asked why he was being stopped. Officer Bradshaw advised him that he was exceeding the speed limit and asked for his driver's license and registration card. Williams called to petitioner, who was seated in the front, to get

the registration card from the glove compartment (J.A. 103–104). As petitioner stepped out of the car to give the registration to Williams the interior lights of the car came on. Officer Harris saw a roll of coins lying under the front seat on the floor of the car and the corner of a canvas bag of the type used by banks (J.A. 112-114). He then turned on his flashlight and examined the bag, which contained other coins (J.A. 106, 113).

When petitioner and his co-defendants were asked if the money was theirs, they remained silent (J.A. 104–107). At that point petitioner and his co-defendants were told to put their hands up and turn around to the car (J.A. 107). Neither Bradshaw or Harris knew of any crimes or crime that had been committed but they arrested them for "investigation" (J.A. 107). At the same time, Officer Bradshaw saw another bank money bag on the floor in the back seat (J.A. 40–41).

An officer drove the car to the Municipal Center where it was impounded (J.A. 42). At the Municipal Center, Bradshaw searched the automobile and took therefrom a hand axe, two bars and a large screw driver—items which Bradshaw had seen prior to the removal of the car to the Municipal Center (J.A. 42, 81).

At the police station, between 5 and 5:30 the same morning, the defendants were searched and a pair of shoes and a pair of trousers were taken from petitioner (J.A. 130). The officer also examined the contents of the bags and found the names of Winston and Park and Shop Pharmacy on checks in the bag (J.A. 132). When Mr. Winston was contacted, he

discovered that his store had been broken into (J.A. 132-135).

## ARGUMENT

I. The Court of Appeals properly found that the local police had acted reasonably and that the arrest and ensuing search were valid. The car was properly stopped for a traffic violation. When, in the course of checking on the car's registration, the officers saw the coins, they had reasonable cause to investigate further the moving vehicle which had just been driven at excess speed in the early hours of the morning. See *Brinegar* v. *United States*, 338 U.S. 160; *Husty* v. *United States*, 282 U.S. 694; *Carroll* v. *United States*, 267 U.S. 132, 162. And the combination of these factors here—driving at an excessive rate of speed in the early hours of the morning with coins and money bags in the car, and the failure of defendants to explain the presence of the money—was sufficient to justify an experienced officer in reaching the conclusion that the defendants had committed larceny, even though the officers did not know of a particular theft. This case is closely comparable to *Bell* v. *United States*, 254 F. 2d 82 (C.A. D.C.), certiorari denied, 358 U.S. 885, in which the local police, after stopping a car for a traffic violation, found reason to infer that the occupants had committed a theft, although the police did not then know from whom. As the Court of Appeals pointed out in *Bell*, 254 F. 2d at 85, the power to arrest on probable cause to believe that a felony has been committed means that the officer may be found to have acted reasonably even if

no felony was in fact committed. Here, of course, the obvious inference proved to be the correct one.[1]

2. Petitioner admits that the fruits or means of a crime may be seized incidental to a lawful arrest, but contends that the shoes and trousers seized incidental to his arrest could no be considered a means used to commit the robbery. This contention is answered by the opinion in *United States* v. *Gaido*, 251 F. 2d 1, 3-4 (C.A. 7), certiorari denied, 356 U.S. 950:

> Defendant argues that articles are not "the means" of committing an offense merely because they have been used in the commission of an offense. If, during a robbery, a robber had a gun in his hand, and wore a mask and gloves, the latter to prevent finger prints, defendant, apparently, would concede that such articles could be seized in a search incidental to a lawful arrest. However, the defendant insists that shoes worn during a robbery do not come within that category.
>
> It is not logical to place in different categories a mask and a hat which might have been worn and pulled down upon the face of the robber to make identification more difficult. It is likewise difficult to place in different categories a pair of gloves worn on the hands and a pair of shoes worn on the feet. Surely, the latter would facilitate a robber's getaway and would not attract as much public attention as

[1] As in *Bell*, the fact that the officer said he was arresting for "investigation" is not conclusive. This was merely a layman's fashion of saying that he had grounds to believe an offense had been committed but did not know exactly how the larceny occurred.

> a robber fleeing barefooted from the scene of the hold-up.

Other decisions support this conclusion. Thus, this Court, in *Marron* v. *United States*, 275 U.S. 192, 199, upheld the seizure, incidental to an arrest, of ledgers and utility bills of a saloon, stating "* * * if the ledger was not as essential to the maintenance of the establishment as were bottles, liquors and glasses, it was none the less a part of the outfit or equipment actually used to commit the offense." See, also, *Morton* v. *United States*, 147 F. 2d 28 (C.A. D.C.), certiorari denied, 324 U.S. 875, a murder case in which the court approved the admission into evidence of a blood-stained shirt and trousers found in the defendant's closet and seized as an incident of his arrest.

## CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1960.

U.S. GOVERNMENT PRINTING OFFICE 1960